August 6th, 2013

Media Captioning Services
2111 Palomar Airport Road
Carlsbad, CA 92011

VIA ECFS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: 15th Annual Assessment of the Status of Competition in the market for the Delivery of Video Programming, MB Docket NO. 12-203

Dear Ms. Dortch:

The following Comments are submitted RE the Fifteenth Report In the Matter of The Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

Sincerely,

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Media Captioning Services commends the FCC for its comprehensive report on the Status of Competition in the market for the Delivery of Video Programming. As we have presented to the FCC, we strongly believe this report- following previous reports- is deficient in not addressing the status of competition in the closed captioning industry, and the impact on consumers.

Section 19 of the Cable Television Communication Act of 1992 amended the Communications Act of 1934 and established regulation for the purpose of competition and diversity in multichannel video programming, including the spurring of development of communications technologies. Closed Captioning is a communications technology which is an intrinsic part of the video signal provided by video programmers, and, as such is a mandated service by Congress per regulations administered by the FCC. The Annual Assessment of the Status of Competition does not address competitive conditions in the closed captioning industry, although we believe it must, since the closed captioning data required in video programming of cable and broadcast entities is mandated by the FCC and the ability of programmers to provide such accessibility to consumers is dependent upon a competitive healthy captioning industry offering fair and reasonable high-quality captioning.

We have stated in ExParte communications our perception that anticompetitive sourcing practices by video programmers are having a serious, detrimental impact on the industry. Specifically, closed captioning programs at court reporting schools across the country are experiencing static or declining enrollment, despite the Federal government offering several grants a year of $230,000 to encourage the development of such programs. In 2012, the AIB School of Business in Des Moines, Iowa shuttered its highly-regarded captioning program, including the Tom Harkin Captioning lab funded with federal dollars. According to school officials, declining enrollment was attributed to parents' perception that court reporting in general, and captioning in particular, was no longer a profession that would pay well in the future.

Clearly, if the Federal government is willing to make grant funds available at a time of sequestration, it must place a high priority on the need to train reporter/captioners for this field. This Congressional objective is being thwarted, in part, by the anticompetitive sourcing practices of video programmers. These practices are designed to offer RFP's or company-specific solicitations excluding factors (i.e. quality), reducing the value of the service, and effectively limiting the field of contenders to a few large captioning companies who will bid down the price to win all of a programmer's captioning business. As a consequence, the price for real time captioning has declined to a level close to the actual production levels of even the largest captioning company. Small to mid-size companies who can only compete on price and customer service are being shut out of the captioning business, and their ability to hire new and experienced captioners is being significantly and negatively impacted.

As noted in the FCC's discussion of Regulatory Conditions influencing Entry (Par 41,(i) of this report, referencing *Horizontal Merger Guidelines, supra .n 85* **"Market power for a seller is the ability, profitably, to maintain prices above competitive levels for significant periods of time. Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation." MCS contends that the converse is equally true-- that buyers, i.e. video programmers whether they be oligopolies or entities with substantial market power, have , in the sourcing (acquisition) of closed captioning services, made "lowest price/all or none" as the pre-eminent factor in their acquisition of closed captioning services. They are denying meaningful opportunities to small, mid-size companies which would make sense not only from a quality control standpoint, but diversifying their risk. The needs of the Deaf and hard of hearing consumers are of secondary concern for many- not all by any means—but certainly a few of the largest video programmers whose control of multiple sports, news, and entertainment properties gives them unprecedented power to allocate captioning business.**

As a consequence, the impact on the closed captioning industry has been to not only affect quality, but also to severely depress small business development (and by small business- we mean companies not dominant in the closed captioning industry) even though by SBA standards such companies might be considered small. If this trend continues, the supply of qualified, capable trained captioners will diminish in the coming two to three years, perhaps sooner. Additionally, small to mid-size dominant companies will exit the business for lack of growth opportunities. Video programmers will have few competitive alternatives—i.e. providers—exposing themselves and consumers to potential denials of service particularly at times of national or regional emergencies. This practice of devaluing closed captioning—essentially reducing their miniscule costs for captioning to generate a better return for stockholders – must be evaluated by the FCC, and put to an end by making the video programmers accountable for the damage to the industry and Deaf and hard of hearing consumers served by the industry. They (consumers) deserve better, and so do the dedicated professionals in captioning who are providing this vital service.

MCS is requesting the FCC conduct a Notice of Inquiry on the Status of Competition in the Closed Captioning Industry to assess whether anticompetitive sourcing practices for closed captioning are being implemented by video programmers. This Notice of Inquiry needs to be implemented in 90 days from this Comment submission date, soliciting comments from Deaf and hard of hearing consumers, service providers, and the video programmers whose programming was reviewed in the 15th Annual Report . We can suggest relevant questions to obtain feedback on as follows:

1. What percentage of gross revenues annually does the video programmer pay for real time closed captioning.

2. What has been the percentage of gross revenues for the past 5 years paid by the video programmer.

3. What is the average length of their contract period?
4. What provision /weighting for quality is in their RFP solicitations?
5. What percentage of real time closed captioning business is provided by a single vendor- noting the vendors name?
6. What provisions are made for backup real time closed captioning in the event of service denials by a provider?
7. What quality/control provisions are important to the video provider?
8. Is the video provider proactive in providing real time captioning opportunities to small, woman-owned and/or minority businesses?
9. Has the video provider provided a set-aside or minimum percentage of hours to be real-time captioned by small, midsize, non-dominant real time closed captioning companies?
10. What is the weighting given for lowest price in RFP's for real-time closed captioning?
11. Does the video programmer consider the market dominance of a captioning company across product lines in their RFP or inquire about whether the pricing is realistic or subsidized?
12. Do video programmers share information regarding pricing and or providers of real-time closed captioning?

These are the baseline questions the FCC needs answers to, and soon. It is essential for the FCC to determine whether additional Rulemaking is necessary to encourage the video programmers to provide meaningful opportunities to small, midsize captioning businesses as part of an "industrial policy" to be sure the closed captioning industry can survive. In addition, the FCC needs to determine if the market power of video programmers in the acquisition of real-time captioning services constitute, or contribute to horizontal market allocations, including concerted refusals to deal, which may constitute violations of the Sherman Act.